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**REMARKS/ARGUMENTS**

Favorable reconsideration of this application is, consequently, earnestly solicited in view of the following remarks. On June 10, 2009, Phyllis Wood (Reg. No. 38,663) left a voice message for Supervisor David Nelms to discuss the prosecution of this case including the outstanding office communication.

The office action dated March 19, 2009 in response to the Quayle response filed on Dec. 22, 2008 was made FINAL. Applicant contests the Examiner's rejection of the claims and the allegation that the action is FINAL for the following reasons.

In the office action dated on July 25, 2008, Applicant was notified that claims 1-2, 5, 7-8, 10-16 and 18-20 were ALLOWED. The office action also stated that "Prosecution on the merits is CLOSED in accordance with the practice under ex parte Quayle, 25 USPQ 74, 453 O.G. 213.

MPEP 1308.01 clearly requires that a claim noted as allowable shall thereafter be rejected only with the approval of the primary Examiner and directs the reader to MPEP 706.04 which states that "A claim noted as allowable shall thereafter be rejected only after the proposed rejection has been submitted to the primary examiner for consideration of all the facts and approval of the proposed action."

Great care should be exercised in authorizing such a rejection. See Ex parte Grier, 1923 C.D. 27, 309 O.G. 223 (Comm'r Pat. 1923); Ex parte Hay, 1909 C.D. 18, 139 O.G. 197 (Comm'r Pat. 1909).

MPEP 706.04 also states that "Because it is unusual to reject a previously allowed claim, the examiner should point out in his or her office action that the claim now being rejected was previously allowed by using Form Paragraph 7.50 Claims Previously Allowed, Now Rejected, New Art: The indicated allowability of claim [1] is withdrawn in view of the newly discovered reference(s) to [2]. Rejection(s) based on the newly cited reference(s) follow."

For the reasons provided, Applicant believes that the present rejection of claims 1-3, 5, 7-8, 10-16 and 18-20 is improper for failing to comply with MPEP 706.04.

Second, this office action includes a premature final rejection. According to MPEP 706.07, before a final rejection is in order, the invention claimed should be thoroughly

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searched in the first action and the references fully applied. The prosecution of the subject application includes:

Prosecution History:

A first office action dated April 5, 2005 to which the Applicant submitted a response on August 4, 2005 including amendment to the claims. Tai (2001/0046027) was not cited as a prior art reference.

A second office action dated November 1, 2005 was made FINAL. Applicant filed a response on January 26, 2006 including further amendments to the claims.

July 26, 2006 Applicant was notified that the amendments to the claims were not entered.

Following a Notice of Abandonment and a Petition to revive an unintentionally abandoned application including a Request for Continued Examination (RCE), the Examiner sent a third office action on the merit on May 31, 2007. Tai (2001/0046027) was not cited as a prior art reference. Applicant filed a response on August 14, 2007.

November 11, 2007 the Examiner notified Applicant that claims 1-2, 5, 7-8, 10-16 and 18-20 were ALLOWED. The office action also stated that "Prosecution on the merits is CLOSED in accordance with the practice under ex parte Quayle, 25 USPQ 74, 453 O.G. 213.

In response to a Quayle dated November 1, 2007, Applicant filed a response on December 13, 2007.

In response, the Examiner filed a Notice of Non-compliant amendment on March 28, 2008. Applicant filed a response on April 22, 2008.

The new drawings and replacement sheets of drawings were not accepted. Applicant filed a response on August 13, 2008 pointing out to the examiner that Dr. Wu, a co-inventor of the subject application, was expert in the art, had over 46 patent issued of which approximately seven (7) of the patents included the terminology "discontinuous" and "continuous" electrodes in describing the configuration of the electrodes for each pixel of a LCD.

An office communication dated December 11, 2008, the Examiner stated that the Applicant had failed to establish any special definition of the term "discontinuous electrode" in the original specification. Applicant's response on December 22, 2008 amended the specification to include a definition for the terminology.

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The rejection dated March 19, 2009 is the first action on the merits wherein the Examiner has cited prior art reference Tai et al., U.S. Patent Publication number 2001/0046,027 in support of the rejection of claims 1-3, 5, 7-8, 10-16 and 18-20. Applicant has not previously been given an opportunity to amend the claims with a view of avoiding the grounds of the rejections and objections. For the reasons provided, Applicant believes that the final rejection is premature and respectfully requests reconsideration and withdrawal of the final rejection.

**Claim Rejections:**

Claims 1-3, 5, 7-8, 10-16 and 18-20 were again rejected under 35 U.S.C. 112, second paragraph as being indefinite because it is still unclear to the Examiner what is meant by "discontinuous . . . electrode".

Applicant has repeatedly responded to the Examiner's allegation of indefiniteness including adding a definition and new figures to the specification. Since Applicant is unable to reply with an amendment that satisfies the Examiner, Applicant respectfully requests that the Examiner suggest an amendment that both satisfies the Examiner and is supported by the original specification.

Claims 1-3, 5, 7, 8, 11-15 and 18-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuyama et al. in view of Tai (2001/0046027A1). Applicant respectfully disagrees for the following reasons.

Tai was combined with Matsuyama because Matsuyama fails to disclose a discontinuous second common electrode located above the continuous pixel electrode. Tai, Figures 3, paragraphs [0029-0032] teaches a plate shaped pixel electrode 302 (continuous) and a stripe-shaped common electrode 301 (discontinuous) that extends over and above the plate shaped pixel electrode 302. See para. [0031]. Tai does not teach combining the plate shaped pixel electrode 302 and a stripe-shaped common electrode 301 with a second continuous (plate-shaped) common electrode on an opposite substrate as claimed in claim 1.

In Figure 4f, paragraphs [0036], Tai teaches stripe-shaped common electrode 409 and a plate shaped pixel electrode 406 with the common electrode above the pixel electrode. However, like the configuration shown in Fig. 3, Tai does not teach inclusion of a second common electrode on the opposite substrate separated by the LC layer as claimed in claim 1.

Matsuyama (Fig. 9 and 10) show a LCD having a continuous common electrode

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(500), a discontinuous common electrode (410) and a discontinuous pixel electrode (300) with the discontinuous common electrode located below the discontinuous pixel electrode (300). Unlike Matsuyama, in claims 1, 2, 5, 7, 8, 10-16 and 18 the pixel electrode (25) is a continuous electrode. Claims 1 and 13 have been amended to clarify that the second discontinuous common electrode layer is located above the continuous pixel electrode shown in Figs. 2-5 and 9.

The combination suggested by the Examiner includes combining the Tai patent which in all embodiments includes common and pixel electrodes on ONE substrate with Matsuyama which, like claim 1, includes common electrodes on the top and the bottom substrates. The Examiner's reasons is that "it would have been obvious to one skilled in the art at the time the invention was made" to make the combination.

There is no suggestion in Matsuyama '765 to teach all the features in the subject claims, as advanced by the Examiner, except from using Applicant's invention as a template through a hindsight reconstruction of Applicant's claims, which is NOT a sole reason to reject the Applicant's claims, and a factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of argument reliant upon ex post reasoning." *Ex Parte Crawford et al*, Appeal 20062429, Decided May 30, 2007. " *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1397. As such, hindsight reconstruction is improper.

The Courts have continued to hold that "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *(In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d at 1397.

In making the rejection the Examiner has completely ignored the claim language of "applying a first voltage to the continuous first common electrode and a second voltage, not equal to the first voltage, to the discontinuous second common electrode". Unlike claims 1, 13 and 19, Matsuyama teaches applying the same voltage applied to the first and second common electrodes. Tai does not teach a configuration including two common electrodes on two different substrates, and thus does not cure the deficiencies of Matsuyama.

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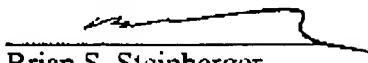
It is clearly improper for the examiner to arbitrarily ignore any of the novel features of the claims. Under the rules, if the applicant requests the examiner cite the reference(s) showing each and every one of the references that supports a rejection, the examiner must cite the reference or remove the rejection. Applicant requests the examiner specifically point out which uncited reference(s) describes and teaches these unsubstantiated opinions and assertions raised in the rejection that at least these features are obvious under sec. 103. If actual references are not cited and supplied to the applicant to show these unsubstantiated opinions and assertions mentioned in their rejection, then applicant respectfully requests removal of the 103 rejection for at least these reasons alone. Any response that includes new references to reject the claims must also be cited as a nonfinal office action, since applicant has not been able to review those references.

For the reasons provided, Applicant believes that claims 1-2, 5, 7-8, 11-15 and 18-20 are allowable under 35 U.S.C. 103(a) over Matsuyama in view of Tai. Thus, removal of the rejection is respectfully requested.

Claims 10 and 16 were rejected under 35 U.S.C. 103(a) over Matsuyama in view of Tai and Nakanishi et al. Applicant respectfully disagrees. Nakanishi does not cure the deficiencies of Matsuyama in view of Tai. For the reasons provided in regard to independent claims 1 and 13, and by way of dependency, Application believes that claims 10 and 16 are allowable and requests removal of the rejection.

In view of the foregoing considerations, it is respectfully urged that claims 1, 2, 5, 7, 8, and 10-16 and 18-20 be allowed or alternatively, remove the finality of the action and making a non-final rejection. No new issues or considerations are being raised. Such action is respectfully requested. If the Examiner believes that an interview would be helpful, the Examiner is requested to contact the attorney at the below listed number.

Respectfully Submitted;

  
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